STATE OF MICHIGAN

COURT OF APPEALS

RLVIC, INC., f/k/a MARCAT MANUFACTURING COMPANY, and REMI L. VICTOR, JR.,

Plaintiffs-Appellants,

v

DAWDA, MANN, MULCAHY & SADLER, CURTIS J. MANN, WILLIAM L. ROSIN, and DANIEL M. ISRAEL,

Defendants-Appellees.

UNPUBLISHED
March 7, 2006

No. 265167
Oakland Circuit Court
LC No. 03-053446-NM

Before: Murray, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(7), and dismissing plaintiffs' first amended complaint, on the ground that plaintiffs' malpractice action was barred by the statute of limitations. We reverse and remand for further proceedings.

I. Facts and Procedural History

According to the allegations within plaintiffs' first amended complaint, plaintiff Remi Victor, as sole shareholder of plaintiff Marcat Manufacturing Co., retained the services of defendant attorneys and law firm (collectively "defendants") to perform all legal services necessary for the sale of Marcat's assets to a minority business, including having the transaction meet the certification requirements of the Michigan Minority Business Development Council (MMBDC). To effectuate this sale, in 1997 plaintiffs executed a purchase agreement, drafted by defendants, under which Spartan Industrial,[1] a minority business certified by the MMBDC,

[1] During the negotiations and drafting of the purchase agreement, Spartan was represented by attorney Stanley Wise, of the firm Wise & Wise. According to Victor, he understood that it was Wise's responsibility to ensure certification of Spartan with the MMBDC after the parties signed the purchase agreement.

agreed to purchase Marcat's assets for $3 million. The agreement was dependent upon approval by the MMBDC of the terms and conditions of the sale. In October 2000, defendants notified plaintiffs that the MMBDC withdrew Spartan's certification because, under the terms of the agreement, Spartan no longer met the MMBDC's requirements for a minority business enterprise.[2] Then, in October 2002, defendants drafted an agreement that reduced the purchase price from $3 million to $1.5 million and provided for the buy-out of Victor's interest in Spartan.

On June 3, 2003, plaintiffs initiated this action against defendants alleging that defendants were negligent in failing to draft the 1997 agreement to meet the requirements of the MMBDC, that defendants fraudulently concealed from plaintiffs that plaintiffs had a cause of action against defendants for legal malpractice, and that defendants fraudulently concealed from plaintiffs that plaintiffs were entitled to reclaim their assets due to Spartan's inability to pay the original $3 million purchase price.

Defendants moved for summary disposition under MCR 2.116(C)(7) on the ground that plaintiffs' first amended complaint was barred by the statute of limitations. Defendants contended that defendants discontinued representing plaintiffs in the sale of Marcat's assets in January 1998 and that the 2002 transaction was a distinct transaction giving rise to a new attorney-client relationship. The trial court agreed and granted defendants' motion on the ground that plaintiffs had untimely sued defendants.

II. Analysis

This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7). *Ousley v McLaren*, 264 Mich App 486, 490; 691 NW2d 817 (2004). When reviewing a motion under MCR 2.116(C)(7), a court must accept all of the plaintiff's well-pleaded allegations as true and construe them most favorably to the plaintiff, unless the allegations are specifically contradicted by documentary evidence. *Xu v Gay*, 257 Mich App 263, 266; 668 NW2d 166 (2003). The court must consider all affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted, and the motion should be granted only if no factual development could provide a basis for recovery. *Id.* If there is no dispute as to the material facts, whether the malpractice claim was timely raises a question of law for the court to decide. *Harris v Allen Park*, 193 Mich App 103, 106; 483 NW2d 434 (1992). If, however, there is a dispute on a material fact, determination of the issue as a matter of law is inappropriate. *Marrero v McDonnel Douglas Capital Corp*, 200 Mich App 438, 441; 505 NW2d 275 (1993).[3]

---

[2] Defendants were initially notified of the certification withdrawal by Wise, who, in October 2000, forwarded to defendants a July 2000 letter from the MMBDC.

[3] In reviewing the trial court's decision, we have not considered volumes II or III of Curtis Mann's deposition. Although they were part of the record since they were filed two days before the motion hearing, see MCR 7.210(A)(1), plaintiffs did not cite that testimony to the trial court in arguing the respective motions. *Karbel v Comerica Bank*, 247 Mich App 90, 96-97; 635 NW2d 69 (2001); *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003).

Under MCL 600.5838, "[a] legal malpractice claim must be brought within two years of the date the attorney discontinues serving the client, or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later." *Maddox v Burlingame*, 205 Mich App 446, 450; 517 NW2d 816 (1994).[4] The "last treatment rule," as codified in MCL 600.5838(1), provides that the two-year statute of limitations governing legal malpractice claims does not begin to run when the professional has ceased to provide services with regard to a single matter; rather, the statute of limitations begins to run only when the professional has ceased providing services as to the broad "matters" out of which the claim arises. *Levy v Martin*, 463 Mich 478, 489 n 18; 620 NW2d 292 (2001); *Nugent v Weed*, 183 Mich App 791, 796; 455 NW2d 409 (1990). "A lawyer discontinues serving a client when relieved of the obligation by the client or the court, or upon completion of a specific legal service that the lawyer was retained to perform." *Maddox*, *supra* at 450 (internal citation omitted).

Maddox is the most analogous case. In that case, the defendants consulted with the plaintiffs about the sale of a business, the closing for which took place in October 1986. Six months later, in April 1987, the plaintiffs told the defendants that the purchasers of the businesses were not making the contracted for payments, so the defendants revised the agreement. In March 1987, the defendants sent a letter, on behalf of the plaintiffs, to the purchasers demanding full payment. A month later the purchasers filed for bankruptcy, and in June 1988, the plaintiffs were told by another attorney that their security interest was ineffective. On August 15, 1988, the plaintiffs and the other attorney called the defendants about the problem, and the defendants researched the issue and billed the plaintiffs for the time. The plaintiffs then sued the defendants on August 14, 1990. The trial court dismissed the case on statute of limitations grounds.

This Court reversed, holding that the defendants isolated but continued work for the plaintiffs, for which the defendants billed the plaintiffs, compelled the conclusion that the defendants were still performing services for the plaintiffs on August 15, 1988:

> In the present case, we must accept as true plaintiffs' well-pleaded allegation that defendant sent them a bill for services rendered on August 15, 1988. Defendant has not specifically denied this allegation. Defendant acknowledges that he did speak with plaintiffs and their Florida attorney, and also conducted legal research on August 15, 1988. At the initial hearing on defendant's motion for summary disposition held on July 10, 1991, the trial court found as fact that defendant did send plaintiffs a bill for services rendered on August 15, 1988.
>
> We agree with counsel for defendant that a call by a disgruntled former client to his former lawyer, accusing him of professional malpractice, does not in itself constitute a continuation of prior representation in connection with the client's business for purposes of the statute of limitations. However, in such a

[4] We note that this case does not involve the six-month discovery rule.

> situation one would not expect the lawyer to bill the former client for the telephone call in question. In the present case, it appears that defendant reviewed applicable provisions of the UCC, contacted plaintiffs and their Florida attorney by phone, and made a memo to the file – all on August 15, 1988. It appears that defendant then billed plaintiffs for one hour of work for performing these services. In this factual setting, we are of the opinion that the work performed by defendant for plaintiffs, and duly billed to them, does constitute continuing representation following the 1986 sale of the business. We believe that an attorney's act of sending a bill constitutes an acknowledgment by the attorney that the attorney was performing legal services for the client. [*Id.* at 450-451 (internal citation omitted).]

We believe that *Maddox* controls this case. As noted, plaintiffs' first amended complaint alleges that defendants were hired to effect the sale of Marcat's assets in such a way that the company would qualify for minority certification by the MMBDC. Although defendants contend that they were not responsible for obtaining the MMBDC certification (but that Stanley Wise was), the purpose in drafting the purchase agreement was to obtain the minority certification, as evidenced by the fact that the agreement itself was dependent upon approval by the MMBDC of the terms and conditions of the sale. Moreover, as in *Maddox*, defendant's own billing sheets show that they continued to consult with Wise and plaintiffs about the continuing problems with obtaining the MMBDC certification which, as we have noted, was the very reason for the purchase defendants were hired to arrange. The billing sheets indicate that defendants continued working and billing plaintiffs on the Spartan purchase in 1999, 2000 and 2001, with billing entries on the matter as late as October 22, 2002. Throughout these years, plaintiffs looked to defendants for answers and advice on any problems that arose with the purchase and the certification, and defendants billed plaintiff for that work. We therefore conclude that defendants did not discontinue serving plaintiffs in the matter out of which the malpractice claims arose in 1998 because, at that time, defendants had not completed the specific legal service they were retained to perform, and continued billing plaintiffs for work in regard to the purchase. See *Maddox, supra* at 450-451. Further, there is nothing to indicate a clear demarcation between the two allegedly discrete representations. We conclude that the billing sheets support plaintiffs' argument that there was an ongoing relationship between defendants and plaintiffs between 1997 and October 2002 and therefore, during that time, defendants provided legal services in furtherance of a continued attorney-client relationship. See *Levy, supra* at 489-490; *Bauer v Ferriby & Houston PC,* 235 Mich App 536, 540; 599 NW2d 493 (1999) (in affirming the trial court's dismissal, the Court noted that the defendant did not bill the plaintiff for any of the follow-up work, which was requested by another attorney, not the client).[5]

[5] For consistency purposes, we note that the unpublished case relied on by defendants is unpersuasive. *Melody Farms Inc v Carson Fischer PLC,* unpublished opinion per curiam of the Court of Appeals, issued February 16, 2001 (Docket No. 215883). In that case, this Court specifically noted that there was no evidence that the law firm billed the client for any time during the relevant period.

Thus, we hold that defendants did not discontinue serving plaintiffs regarding the broad matter out of which plaintiffs' claims arose until October 2002 and, therefore, plaintiffs' June 3, 2003, first amended complaint was timely under the two-year statute of limitations set forth in MCL 600.5838. *Levy*, *supra* at 489 n 18.

Because of our resolution of this issue, we need not address plaintiffs' contention that the trial court erred in denying the motion for reconsideration.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Henry William Saad